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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1994]

State of emergency and administration of justice in Northern Ireland

1. The International Federation of Human Rights (IFHR) and its Northern Ireland correspondent, the Committee on the Administration of Justice (CAJ), remain concerned about a number of human rights issues in Northern Ireland which are closely linked to the Government-declared state of emergency and which also concern the protection of lawyers.

2. These issues have been the subject of comment at the Human Rights Committee in April 1991, the Committee against Torture in November 1991, the Sub-Commission in August 1992, the Commission on Human Rights in February 1993 and the Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1993. Furthermore, the European Committee for the Prevention of Torture carried out an ad hoc visit to Northern Ireland in July 1993.

3. The IFHR and the CAJ are concerned at the lack of an appropriate response from the United Kingdom Government to these issues and are further concerned that it appears that criticism is often met with an attempt to deflect attention from its own violations by highlighting the ongoing problem of politically motivated violence by illegal organizations in Northern Ireland. Unlike the United Kingdom Government these illegal organizations make no claim to be adhering to international human rights standards. The IFHR and the CAJ are firmly convinced that abuses of human rights, particularly in relation to threats against lawyers, the ill-treatment of detainees and extrajudicial killings, can have no part to play in the creation of a more just and peaceful society.

Access to legal advice and the situation of lawyers

4. Detainees held under emergency legislation in Northern Ireland can be kept incommunicado for up to 48 hours. They can be denied access to their lawyers for up to an initial period of 48 hours and for further periods of 48 hours thereafter. Detainees can be held for up to seven days without being brought before a court. This power has been found to be in breach of the European Convention on Human Rights and the United Kingdom Government has issued a notice of derogation from both the Convention and International Covenant on Civil and Political Rights in respect of the power to detain.

5. The IFHR and the CAJ are particularly concerned at the domestic laws governing access to lawyers which clearly contravene paragraph 8 of the Basic Principles on the Role of Lawyers. This provides that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials." In Northern Ireland police officers may be both within the sight and hearing of legal consultations. In the rest of the United Kingdom detainees arrested under the same emergency legislation can have their lawyer present while they are being interviewed. In our view such differential access to justice cannot be acceptable and indicates an official hostility and distrust of legal defenders in Northern Ireland.

6. This is all the more worrying given that detainees continue to report that police officers make derogatory comments and threats against the lives of their lawyers. This problem has been referred to in the 1992 and 1993 reports of the Special Rapporteur of the Sub-Commission on the independence of the judiciary and the protection of practising lawyers.

7. The United Kingdom Government, in response to the written statement by the IFHR to the Sub-Commission in August 1993 and to the oral intervention by the International Commission of Jurists, stated that "as yet no factual information has been presented to substantiate these allegations". This is not the case. There is already a substantial body of evidence in the public domain. The Government went on to say that if "any organization holds information which is relevant it should be handed over to the police immediately for investigation". It is the view of the IFHR and the CAJ that a police investigation into serious allegations of police misconduct is unlikely to get to the truth or to assuage public concern. The independent

expert from the United Kingdom on the Sub-Commission suggested in her comments at the 1993 session that the police justification for non-investigation of allegations of police misconduct in relation to lawyers was misguided and that they had a duty to investigate.

8. Related to these allegations of threats against lawyers is the as yet unsolved 1989 murder of defence lawyer Patrick Finucane. There is strong evidence of official collusion in Mr. Finucane's death which indicates the involvement of an undercover army intelligence officer, Mr. Brian Nelson.

9. During the Sub-Commission's proceedings in 1992 the expert from the United Kingdom also called for an independent inquiry, a call she repeated at the 1993 session of the Sub-Commission. As yet the United Kingdom Government has failed to institute such an inquiry. In their response to the written statement by the IFHR at the 1993 Sub-Commission the Government stated, "we are naturally looking at all the implications of the Nelson case. Nobody underestimates the seriousness of what occurred. Any lessons will be learned and applied." While this matter was referred to the Director of Public Prosecutions some time ago to date no action has been taken concerning Mr. Nelson's involvement in the death of Patrick Finucane. The IFHR and the CAJ remain seriously concerned at the apparent inaction in relation to the investigation of this death and reported the case to the Special Rapporteur on extrajudicial, summary or arbitrary executions in November 1993.

Safeguards to prevent ill-treatment of detainees

10. The Government have as yet failed to implement comprehensive and effective safeguards to prevent the physical and psychological ill-treatment of detainees held under emergency legislation. In 1978 the European Court of Human Rights found in the case of Ireland v. United Kingdom that the United Kingdom was subjecting detainees to inhuman and degrading treatment in Northern Ireland. In 1991 the United Nations Committee against Torture looked at renewed allegations of ill-treatment and was concerned at the absence of effective safeguards to prevent ill-treatment. In particular, IFHR and the CAJ remain concerned at the Government's continued reluctance to introduce audio and video recording of interviews. Such a system would provide a record of events, and protect both detainees and police officers. The Independent Commission for Police Complaints in Northern Ireland has called for such a system. In the last five years it has been unable to substantiate a single complaint concerning ill-treatment of detainees held under emergency legislation in Northern Ireland.

11. In December 1992 the United Kingdom Government appointed an independent commissioner with powers to visit the holding centres and it has recently produced a code of practice concerning the detention of people held under the emergency legislation. While welcome, the IFHR and the CAJ are of the view that these fall far short of the required safeguards. In particular, as well as the urgent need to introduce audio and video recording of interrogations, lawyers should be allowed to attend interrogations as is the case everywhere else in the United Kingdom. More recently, in July 1993 the European Committee for the Prevention of Torture made an ad hoc visit to

Northern Ireland to examine the situation of detainees. The IFHR and the CAJ very much hope that the United Kingdom Government will agree to the publication of the report on their visit.

The use of lethal force

12. The IFHR and the CAJ remain concerned that police and soldiers in Northern Ireland have been responsible for killing some 350 people since 1969. There is particular concern at the consistent lack of accountability in relation to these deaths. Only some 33 prosecutions have been brought and only 4 have resulted in convictions.

13. Decisions regarding whether or not to prosecute are characterized by long delays. The recent court case concerning the killing of an unarmed civilian, Fergal Carraher, illustrates the difficulty in obtaining convictions. The decision not to prosecute in the case of Pearse Jordan, an unarmed member of the IRA, in spite of eyewitness evidence gathered by IFHR and CAJ which strongly suggests that he could have been arrested, highlights the problems with the law on the use of lethal force in the United Kingdom.

14. The IFHR and the CAJ believe that there should be a comprehensive inquiry into the law on the use of lethal force and the investigation of extrajudicial killings. This should measure existing law and practice against internationally agreed standards such as the European Convention on Human Rights, the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. IFHR and the CAJ have recently asked the Special Rapporteur on extrajudicial, summary or arbitrary executions to consider these issues in the light of three particular deaths.

15. In conclusion, the IFHR and the CAJ respectfully request the Commission to urge the United Kingdom Government to ensure that its laws and the actions of its security forces in Northern Ireland fully comply with its responsibilities in international human rights law.